



UNITED STATES DEPARTMENT OF COMMERCE
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07/311,921

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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EXAMINER	
WILLSE, D	
ART UNIT	PAPER NUMBER
338	12

DATE MAILED: 09/13/90

Below is a communication from the EXAMINER in charge of this application
COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

☒ THE PERIOD FOR RESPONSE:

☐ is extended to run _____ from the date of the Final Rejection

☒ continues to run 3 months from the date of the Final Rejection

☐ expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date that the shortened statutory period for response expires as set forth above.

☐ Appellant's Brief is due in accordance with 37 CFR 1.192(a).

☒ Applicant's response to the final rejection, filed 9-4-90, has been considered with the following affect, but it is not deemed to place the application in condition for allowance:

1. ☐ The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because:
 - a. ☐ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
 - b. ☐ They raise new issues that would require further consideration and/or search. (See Note).
 - c. ☐ They raise the issue of new matter. (See Note).
 - d. ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
 - e. ☐ They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____

2. ☒ Newly proposed or amended claims 52, 53, 55, 56, 61, 62, 64, 65, 67, 68, 70, 71, 73, 74, 76, 77, 79, 80, 82, 83, and 85 would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.

3. ☒ Upon the filing of an appeal, the proposed amendment ☒ will be ☐ will not be, entered and the status of the claims in this application would be as follows:

Allowed claims: 52, 53, 55, 56, 61, 62, 64, 65, 67, 68, 70, 71, 73, 74, 76, 77, 79, 80, 82, 83, and 85

Claims objected to: _____

Claims rejected: 7, 8, 10, and 16

However:

- a. ☐ The rejection of claims _____ on references is deemed to be overcome by applicant's response.
- b. ☐ The rejection of claims _____ on non-reference grounds only is deemed to be overcome by applicant's response.

4. ☐ The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection.

5. ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.

☒ Other Please see the attachment.

RANDALL L. GREEN
SPE
ART UNIT 338


Serial No. 311,921

-2-

Art Unit 338

Attachment to Paper No. 12

During the interview held on July 13, 1990, the applicant characterized the invention of Moise as being cable driven (as in the Wampler device), and subsequent discussions during the interview concerning claims 7 and 16 were based on this presumption. However, upon further review of the Moise reference it is seen that one embodiment, that of Figure 1, is driven by a motor 14 contained within the housing. It is thus maintained by the examiner that claims 7,8,10, and 16 are not patentable over Moise for the reasons set forth in the previous action. Both the embodiment shown at the interview and the embodiment in Figure 1 of Moise have a generally cylindrical form and are dimensionally of the same order of magnitude. It was argued that the device of Moise would have edges too sharp or unsuitable for placement within the heart; however, the blood pump of Moise is intended to be implantable and is thus deemed to have appropriate surface characteristics. It is therefore not seen how claim language such as "configured to reside wholly within the natural heart" distinguishes the claimed invention over Moise.


D. Willse:lf
September 12, 1990
703-557-3125